

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

|                                  |   |                       |
|----------------------------------|---|-----------------------|
| <b>BRANDON-CHARLES HOMER EL,</b> | § |                       |
| <b>Petitioner,</b>               | § |                       |
|                                  | § |                       |
| v.                               | § | <b>3:10-CV-0836-P</b> |
|                                  | § |                       |
| <b>STATE OF TEXAS,</b>           | § |                       |
| <b>Respondent.</b>               | § |                       |

**FINDINGS, CONCLUSIONS AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE**

Pursuant to the provisions of 28 U.S.C. § 636(b), and an order of the District Court in implementation thereof, this case has been referred to the United States Magistrate Judge. The findings, conclusions and recommendation of the Magistrate Judge, as evidenced by his signature thereto, are as follows:

**FINDINGS AND CONCLUSIONS:**

On April 27, 2010, Petitioner filed this habeas corpus petition pursuant to 28 U.S.C. § 2241 on behalf of a minor relative incarcerated at the Henry Wade Justice Center in Dallas, Texas. On April 30, 2010, the magistrate judge issued a questionnaire to Petitioner seeking information about the detention of his minor relative. As of the filing of this recommendation, Petitioner has not responded to the magistrate judge's questionnaire. Nor has he requested an extension of time to respond or otherwise contacted the court.

Rule 41(b), of the Federal Rules of Civil Procedure, allows a court to dismiss an action *sua sponte* for failure to prosecute or for failure to comply with the federal rules or any court order. *See Larson v. Scott*, 157 F.3d 1030, 1031 (5th Cir. 1998); *McCullough v. Lynaugh*, 835 F.2d 1126, 1127(5th Cir. 1988). "This authority [under Rule 41(b)] flows from the court's


inherent power to control its docket and prevent undue delays in the disposition of pending cases.” *Boudwin v. Graystone Ins. Co., Ltd.*, 756 F.2d 399, 401 (5th Cir. 1985) (citing *Link v. Wabash R.R. Co.*, 370 U.S. 626 (1962)).

Petitioner has had ample opportunity to submit his answers to the magistrate judge’s questionnaire. He has refused and failed to do so. Therefore, this action should be dismissed without prejudice for want of prosecution. *See* Fed. R. Civ. 41(b) (an involuntary dismissal “operates as an adjudication on the merits,” unless otherwise specified); *Callip v. Harris County Child Welfare Department*, 757 F.2d 1513, 1519 (5th Cir. 1985) (setting out higher standard for dismissals with prejudice for want of prosecution).<sup>1</sup>

RECOMMENDATION:

For the foregoing reasons, it is recommended that the petition for a writ of habeas corpus be DISMISSED without prejudice for want of prosecution.

Signed this 16<sup>th</sup> day of June, 2010.

  
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PAUL D. STICKNEY  
UNITED STATES MAGISTRATE JUDGE

NOTICE

A copy of this report and recommendation shall be served on all parties in the manner provided by law. Any party who objects to any part of this report and recommendation must file specific written objections within 14 days after being served with a copy. *See* 28 U.S.C. §

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<sup>1</sup> Insofar as Petitioner seeks pre-trial habeas relief, no statute of limitations appears to be implicated. Generally the one-year statute of limitations, *see* 28 U.S.C. § 2244(d), is inapplicable to § 2241 habeas petitions like the one at issue in this case. As such, the court need not apply the higher *Callip* standard of review.

636(b)(1); FED. R. CIV. P. 72(b). In order to be specific, an objection must identify the specific finding or recommendation to which objection is made, state the basis for the objection, and specify the place in the magistrate judge's report and recommendation where the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the magistrate judge is not specific. Failure to file specific written objections will bar the aggrieved party from appealing the factual findings and legal conclusions of the magistrate judge that are accepted or adopted by the district court, except upon grounds of plain error.